

IN THE HIGH COURT OF JUDICATURE AT BILASPUR.

Cr. APPEAL NO. 1171 / 2001.

APPELLANT.
(IN JAIL).

Dasin Bai alias Shanti Bai, widow of Late
Mannudas, aged about 35 years, resident of
village Kotsagar under P. S. Kota,
Distt. Bilaspur, Chhattisgarh.

VERSUS.

RESPONDENT.
PROSECUTOR.

The State of Chhattisgarh.

CRIMINAL APPEAL.

UNDER SECTION 374(2) OF THE Cr. P. C.

मामला क्रमांक G.A. 1171/... सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench: -</u> <u>Hon'ble Mr. L.C. Bhadoo and</u> <u>Hon'ble Mr. Dhirendra Mishra, JJ.</u> <u>1-12-2006</u> Mr. Goutam Khetrapal, counsel for the appellant. Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent. Oral judgment dictated on <i>Dais</i>. <u>Per L.C. Bhadoo, J: -</u> Appellant Dasin Bai @ Shanti Bai has preferred this appeal questioning legality and correctness of the judgment dated 29th September, 2001, passed by the Sessions Judge, Bilaspur, in Sessions Trial No.134/2000, whereby learned Sessions Judge after convicting the accused/appellant for commission of offence under Section 302 of the I.P.C., sentenced her to suffer imprisonment for life. Case of the prosecution, in brief, is that in the intervening night of 1st & 2nd February, 2000, Raju Rajak (since deceased) went to Railway Station: Kargi Road after finishing his work at the hotel where he was working. The accused/appellant met him on the station and requested him to drop her to her residence at Kotsagar Para, Kota, however, when the deceased was returning from the house of Dasin Bai after dropping her at her house, Dasin Bai requested him to stay back, therefore, he slept in the house of Dasin Bai covering his body with a quilt. Thereafter, Dasin Bai poured kerosene from the Jerican on Raju, sensing the smell of kerosene, Raju woke up. He saw that Dasin Bai set him on fire with a matchbox on which Raju started burning. He raised cries. Santosh Yadav and	

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आदेश पत्रक (पूर्वानुबद्ध)

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	others came running and saw that Raju was burning. Santosh Yadav covered the body of Raju with his shawl. At that time, Dasin Bai was standing there, in the mean time, number of persons were collected on the site in front of whom, Raju disclosed that Dasin Bai has set him on fire after pouring kerosene on him, the smell of kerosene was emanating from the body of Raju. Raju was taken to Primary Health centre, Kota. When Raju was in the hospital, dying declaration (Ex.P-1) of Raju was recorded by PW-12 S.L. Soni in the presence of Radheyshyam, Santosh & Basant Singh. On 3-2-2000, Raju while in the hospital succumbed to the burn injuries sustained by him. On 2nd February, 2000, the Investigating Officer seized burnt bedding, bed sheet, plastic Jerican, one matchbox and one half burnt stick of matchbox under Ex.P-2 from the place of occurrence. Half-burnt clothes of Raju and one wristwatch were seized under Ex.P-3. Site plan Ex.P-4 of the place of occurrence was prepared by the Investigating Officer. In the mean time, on 3-2-2000 Raju succumbed to the burn injuries. On receiving the merg intimation (Ex.P-14), the Investigating Officer reached to the hospital and after giving notice Ex.P-15 to the Panchas, he prepared the inquest (Ex.P-7) on the body of Raju. Ex.P-8, the site plan of the place of occurrence, was prepared by the Halka Patwari. Burn injury report Ex.P-9 was prepared by Dr. N.K. Samdariya (PW-6). Burn injuries of Santosh Yadav, the witness, were also examined by Dr. S. Tudu (PW-7) and he prepared the injury report Ex.P-10A. The burn injury report (Ex.P-11A) of Dasin Bai, the accused/appellant, was also prepared after examination of her body by Dr. S. Tudu. The body of Raju was sent to the District Hospital, Bilaspur under Ex.P-12 where post-mortem was conducted by Dr. R.K. Gupta (PW-8) who prepared the post-mortem	

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	report (Ex.P-12A) and opined that the deceased died due to shock caused by extreme ante-mortem burn. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, from where the report Ex.P-22 was received. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn, committed the case to the Session Judge, Bilaspur for trial. In order to establish charge against the accused, the prosecution examined 12 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which in reply to question No.3, she has stated that it is true that one person was raising cries 'save save' in her house on account of burn. In reply to question No.5, she has stated that one boy came out of her house in burning condition and she was standing in the house. In reply to question No.8, she has stated that it is correct that Santosh took that boy to the Kota hospital. In reply to question No.10, she has stated that she does not know the name of that boy. In reply to question No.15 that Radheyshyam (PW-3) has stated that he heard the screams of a person 'save save' and smoke was coming out from the house, she has replied that it is correct. In reply to question No.16, she has stated that when the boy came out of her house in burnt condition, she was standing near the cot. In reply to question No.29, she has admitted that she also received burn injuries on right hand. In reply to question No.40, she has stated that she does not know as to how the boy was burnt, she has been falsely implicated in the crime. In reply to the last question, she has stated that she is innocent, one kerosene lamp	

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	(chimney) was lying in the niche (आला), when the boy was sleeping in the house that lamp fell on him and the clothes caught the fire. She examined one defence witness Basant Singh Thakur (DW-1) in her defence. Learned Sessions Judge after hearing counsel for respective parties as also after perusal of the record, convicted and sentenced the accused as aforementioned. We have heard Mr. Goutam Khetrapal, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/ respondent. It is admitted position that Raju met with death on account of burn injuries sustained by him in the house of the accused which has not been disputed by learned counsel for the appellant and even the appellant herself has admitted the same in her statement under Section 313 of the Cr.P.C. Dr. R.K. Gupta (PW-8) has stated in his evidence that on 3rd February, 2000, he conducted post-mortem on the body of Raju, smell of kerosene was emanating from hairs and body of Raju, his face, hairs, chest, stomach, right hand, left hand, iliac crest, gluteal region, back side & private parts were burnt and the burn injuries were up to 65%. He has stated that Raju met with death on account of burn injuries and he died as a result of shock and burn injuries. Therefore, it is established that Raju died on account of burn injuries sustained by him. As far as involvement of the accused/appellant in the crime in question is concerned, in this case there is no ocular evidence. Conviction rests on the oral	

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	dying declaration made by deceased Raju before Santosh Yadav (PW-1) & Radheyshyam (PW-3). Mr. Khetrapal, learned counsel for the appellant, argued that in the evidence it has come that the gate of the house of the accused was closed & locked and as per the evidence of the prosecution witnesses, they entered the house after breaking the lock. Therefore, it was not possible for the accused to remain inside the house when the house was locked from outside. He further submitted that the evidence of Santosh Yadav (PW-1) & Radheyshyam (PW-3) is not worth reliance. Looking to the 65% burn injuries received by the deceased it was not possible for him to give oral dying declaration, as he was not in a position to speak. On the other hand, Mr. Deo, learned Additional Public Prosecutor supported the judgment of the trial court. In order to appreciate the arguments advanced by respective counsel, we have perused the evidence. Santosh Yadav (PW-1) is the person who has stated in his evidence that he resides in the neighbourhood of the house where the accused/appellant was residing. He has stated that in the night at about 2-3 a.m. when he was sleeping inside his house, all of a sudden, he heard the cries 'save save', he woke up and rushed towards the back side of his house, he saw that Radheyshyam, the neighbourer was also rushing towards that side and the cries were coming from the house of Dasin Bai i.e. the accused. He along with Radheyshyam reached the house of Dasin Bai, the house was thatched house, the roof was having tiles, smoke was coming out through the tiles, the door of the	

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	house was closed and there were screams from inside the house 'save save'. The door was wooden door, however, through the holes of the door it was possible to peep inside and he saw that one boy burning inside the room was crying 'save save'. Thereafter, they broke open the door on which the boy came out and at that time, Dasin Bai, the accused, was standing in one corner of the room, she was standing motionless and silent. He covered the body of the boy with his shawl and on enquiry, the boy said that Dasin Bai met him on the railway station and requested him to drop her at her house, on which he came to the house of Dasin Bai, when he was sleeping, Dasin Bai poured kerosene and set him on fire. On further enquiry, the boy disclosed that his house is in Barkalari Para. He is working in a hotel. Thereafter, he (PW-1) along with Radheyshyam, Ghasiram & Basant took the boy in a rickshaw to the Government Hospital, Kota. In cross-examination para 6, PW-1 has stated that clothes were burning in the room, Dasin Bai was standing in the room, she was standing near a box and he did not enquire anything from Dasin Bai. Similar is the evidence of Radheyshyam (PW-3) who has corroborated the fact that he also reached on the site and saw Raju in burnt condition, he has also corroborated the fact that Raju made oral dying declaration before them. There is nothing in the cross-examination to show that these witnesses are on inimical relations with the accused or their evidence suffers from any infirmity as to discredit their evidence. They are independent witnesses and neighbours also. Even in the process, Santosh Yadav (PW-1) also sustained burn injuries, which is evident from his injury report Ex.P-10A. The doctor who examined this witness has mentioned that there were blisters on the palm of this witness. Therefore, this burn injury and blisters further establish that this witness was	

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आदेश पत्रक (पूर्वानुबद्ध)

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	present on the scene of occurrence. Moreover, even Dasin Bai has not disputed the fact that Raju sustained burn injuries in her house and she has even admitted her presence in the house. The only explanation offered by the accused in the last portion of her statement is that Raju sustained burn injuries on account of the fall of a kerosene lamp (chimney) from the niche (आला). Even the accused in reply to question No.14 has stated that she does not know as to how the boy sustained burn injuries and on the other hand, she has stated that the boy sustained burn injuries on account of the fall of kerosene lamp which contradicts each other. But this appears to be after thought of the accused, because there is no cross-examination on this aspect from these witnesses before whom Raju made oral dying declaration. No explanation whatsoever has been coming forward from the accused at the time when Santosh Yadav (PW-1) & Radheyshyam (PW-3) reached to the spot, that was the occasion for her to tell them that the boy has sustained burn injuries on account of falling of kerosene lamp. The Investigating Officer has been cross-examined on this aspect about the kerosene lamp, he has categorically denied and has said that during the investigation no kerosene lamp was found on the spot. Therefore, it is after thought and belies the defence of the accused. Had Raju sustained burn injuries on account of falling of lamp on the bed, the accused ought to have immediately disclosed this fact to the persons who came immediately on hearing the screams of the boy. Now, coming to the argument advanced by Mr. Khetrapal that as per the evidence, the witnesses entered the house after breaking the lock therefore, it was not possible for the accused to remain inside the house, close scrutiny of the evidence and the statement of the accused demolishes the argument advanced by	

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आदेश पत्रक (पूर्वानुबद्ध)

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	Mr. Khetrapal for the reason that the lock which was broken by the witnesses was of the outer gate and not the room in which the deceased sustained burn injuries. It is not the case that the room in which the deceased sustained burn injuries was locked from outside. Moreover, the accused herself has admitted her presence in the room, in her statement under Section 313 of the Cr.P.C. Therefore, the argument advanced by Mr. Khetrapal is devoid of merit. As far as the second argument that Raju was not in a position to speak as he sustained 65% burn injuries is concerned, the accused in her statement under Section 313 of the Cr.P.C. in reply to question Nos.5 & 16 has said that the boy came out of the room in burnt condition. Moreover, the boy died in the hospital on 3rd February, 2000, whereas he made oral dying declaration before these witnesses (PW-1 & PW-3) immediately after sustaining these injuries. There is nothing on record which establishes that the boy immediately became unconscious in the house itself and he was not in a position to speak. Moreover, because the deceased sustained 65% burn injuries it cannot be held that he was not in a position to speak. In view of the fact that the boy made oral dying declaration before Santosh Yadav (PW-1) & Radheyshyam (PW-3) which has been established by the evidence of these witnesses, the accused was standing in the house and she was the best person to explain as to how the boy sustained the injuries that was not explained by the accused at the time when the witnesses came in the house because, as per Section 106 of the Evidence Act, the boy and the accused were in the room, that is why it was within the special knowledge of the accused regarding	

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Soma	breaking up of the fire in the room and the boy has stated in the oral dying declaration that the accused set the boy on fire, therefore, there is no reason to disbelieve the oral dying declaration made by the deceased before the witnesses, as such, we do not find any illegality or infirmity in the finding of the trial Court. In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. Consequently, M.(W.)P. No.2516/2006 stands disposed of. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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